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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,882	08/14/2001	David P. Guilfoyle	19390.01US1	9295

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/13/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/929,882

Applicant(s)

GUILFOYLE ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of claims 1-13 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-6, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Raufeisen [Pat. No. 4,674,402].

Raufeisen teaches a dough proofing apparatus comprising a thermally conductive enclosure with trays and a base with wheels (Figure 4, 29), the trays acting as partitions, and a thermally-controlled chamber (Figure 4, 15) with refrigeration units (Figure 4, 42-43) and heating units (Figure 4, 32-33). Phrases such as "to allow a temperature in the enclosure to substantially normalize" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

4. Claims 1, 4-7, and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubbright et al [Pat. No. 4,323,110].

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Rubbright et al teach an apparatus comprising a thermally conductive enclosure (Figure 2, 9), trays (Figure 2, 19), a base with wheels (Figure 2, 67), partitions (Figure 2, 65), a door (Figure 2, 80), and a thermally-controlled chamber with chilling units and heating units (Figure 2, 26). Phrases such as "to allow a temperature in the enclosure to substantially normalize" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

5. Claims 1-2, 4-6, 9-10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohn et al [Pat. No. 5,782,174].

Cohn et al teach a dough proofing apparatus comprising a thermally conductive, metal enclosure (Figure 1, 10), trays which act as partitions (Figure 5, 35), a base with wheels (Figure 1, 15), and a thermally-controlled chamber which can be heated (Figure 1, 11). Phrases such as "to allow a temperature in the enclosure to substantially normalize" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohn et al.

Cohn et al teach the above mentioned components. Cohn et al do not teach a plastic enclosure. It would have been obvious to one of ordinary skill in the art to construct the enclosure of Cohn et al from plastic since plastic was commonly used in heating devices and since Cohn et al already taught a plastic heating chamber (Figure 1, 11).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rubbright et al as applied to claim 7 above, and further in view of Baggott [Pat. No. 4,544,024]. Rubbright et al teach the above mentioned components. Rubbright et al do not teach a door gasket. Baggott teaches a food heating and cooling device comprising a gasket (Figure 7, 34). It would have been obvious to one of ordinary skill in the art to incorporate the gasket of Baggott into the invention of Rubbright et al since both are directed to food heating and cooling devices, since Rubbright et al already included a door, since food treating devices commonly included gaskets as shown by Baggott, and since gaskets were conventionally used in heating and cooling devices in order to provide an efficient seal and thus prevent the escape of cooled or heated air.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Westbrooks Jr et al [Pat. No. 5,896,915], Cohn et al [Pat. No. 5,802,963], Allen [Pat. No. 4,373,430], Rainwater [Pat. No. 3,690,118], Tippmann et al [Pat. No. 5,086,693], and Liebermann [Pat. No. 5,404,935] teach dough proofing and food treating devices.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew Becker  
August 8, 2002